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PUBLIC UTILITIES AND PUBLIC TRANSPORTATION

Telephone and Telegraph Service: Prohibit Certain Telephone Solicitations to Residential Subscribers Who Have Given Notice of Their Objection to the Public Service Commission; Provide for Legislative Findings and Definitions; Provide for Data Base Construction and Fee; Require Certain Disclosure; Provide for Confidentiality; Restrict Caller ID Blocking; Provide for Civil Action; Provide for Enforcement by the Administrator of Consumer Affairs

CODE SECTION:	O.C.G.A. § 46-5-27 (new)
BILL NUMBER:	HB 71
ACT NUMBER:	698
GEORGIA LAWS:	1998 Ga. Laws 505
SUMMARY:	The Act prohibits telephone solicitations to residential telephone subscribers who indicate their opposition to such solicitations. Residents who do not wish to receive telephone solicitations may pay a fee to have their phone number entered into a data base. The Georgia Public Service Commission shall establish this data base and provide for its operation. Information contained in the data base will not be subject to public inspection or disclosure. The administrator of consumer affairs will provide enforcement. The Act provides for penalties in the event of noncompliance.
EFFECTIVE DATE:	July 1, 1998 ¹

History

Each day more than 300,000 telephone solicitors contact citizens in the privacy of their homes in an attempt to sell goods and services and

1. See 1998 Ga. Laws 505, § 2, at 509. The Act became effective “on July 1, 1998, for purposes of [the] administrative establishment of the data base, including receipt of notices, by the Public Service Commission”; however, the Act becomes “effective for all other purposes on January 1, 1999.” *Id.*

solicit charitable donations.² Many people regard these solicitations as a nuisance and an invasion of privacy.³ The Act recognizes the need to balance these privacy rights with a solicitor's right to freedom of speech.⁴

Representatives Thomas Murphy of the 18th District and Thomas Shanahan of the 10th District sponsored HB 71 to provide citizens with a mechanism for deciding whether to receive telephone solicitations in the privacy of their homes.⁵

HB 71

Introduction

Representative Murphy originally introduced the Act in the 1997 legislative session, during which it passed in the House but failed in the Senate. The bill was reintroduced in the 1998 legislative session;⁶ however, several of the substantive changes legislators made to the bill occurred during the 1997 legislative session.⁷ Ultimately, the language in the Act remained substantially similar to the original version of the bill.⁸

Consideration by House Industry Committee

In the 1997 legislative session, the House Industry Committee added several provisions to the bill before it went to the House floor for a vote.⁹ First, the Committee substitute added a requirement that telephone solicitors identify themselves at the beginning of a call.¹⁰ Second, the Committee substitute granted the administrator of

2. See O.C.G.A. § 46-5-27(a)(3) (Supp. 1998).

3. See *id.* § 46-5-27(a)(5); Interview with Rep. Thomas B. Murphy, House District No. 18 (June 23, 1998) [hereinafter Murphy Interview]. Speaker Murphy indicated that many people, especially the elderly, contacted his office complaining about telephone solicitations. See *id.*

4. See O.C.G.A. § 46-5-27(a)(6) (Supp. 1998).

5. See *id.* § 46-5-27(a)(7); Murphy Interview, *supra* note 3.

6. See Murphy Interview, *supra* note 3; HB 71, as introduced, 1998 Ga. Gen. Assem.

7. See text accompanying *infra* notes 9-36.

8. See Murphy Interview, *supra* note 3. Compare HB 71, as introduced, 1997 Ga. Gen. Assem., with O.C.G.A. § 46-5-27 (Supp. 1998).

9. Compare HB 71, as introduced, 1997 Ga. Gen. Assem., with HB 71 (HCS), 1997 Ga. Gen. Assem.

10. Compare HB 71, as introduced, 1997 Ga. Gen. Assem., with HB 71 (HCS), 1997 Ga. Gen. Assem.

consumer affairs the authority to enforce the bill.¹¹ Third, the Committee added a scienter requirement for violations, allowing recovery only for “knowing” violations by solicitors.¹² Fourth, the Committee added multiple sections limiting the time span in which the administrator could bring an action or proceeding under the bill and allowing Georgia to exercise personal jurisdiction over any nonresident.¹³ Moreover, the Committee provided that the remedies, duties, prohibitions, and penalties in the bill were not exclusive.¹⁴ Fifth, the Committee substitute added a section giving the administrator authority to initiate proceedings, pursuant to Code section 10-1-397 of the Fair Business Practices Act.¹⁵ Finally, the Committee substitute increased the amount that a person could recover for each knowing violation from \$500 to \$2000.¹⁶ House members increased this amount because they felt that \$500 was not a sufficient penalty.¹⁷

The Committee also made several significant deletions from the bill. The Committee substitute eliminated a provision for civil penalties.¹⁸ Likewise, it eliminated a provision that allowed the court to increase an award to an amount equal to no more than three times the amount provided for in the bill in the event the court found the violation to be wilful or knowing.¹⁹

From House Committee Substitute to House Floor Amendment

After the House Industry Committee passed the bill by substitute, the bill proceeded to the House floor where the representatives

11. *Compare* HB 71, as introduced, 1997 Ga. Gen. Assem., *with* HB 71 (HCS), 1997 Ga. Gen. Assem.

12. *Compare* HB 71, as introduced, 1997 Ga. Gen. Assem., *with* HB 71 (HCS), 1997 Ga. Gen. Assem.

13. *Compare* HB 71, as introduced, 1997 Ga. Gen. Assem., *with* HB 71 (HCS), 1997 Ga. Gen. Assem.

14. *Compare* HB 71, as introduced, 1997 Ga. Gen. Assem., *with* HB 71 (HCS), 1997 Ga. Gen. Assem.

15. *Compare* HB 71, as introduced, 1997 Ga. Gen. Assem., *with* HB 71 (HCS), 1997 Ga. Gen. Assem.

16. *Compare* HB 71, as introduced, 1997 Ga. Gen. Assem., *with* HB 71 (HCS), 1997 Ga. Gen. Assem.

17. *See* Murphy Interview, *supra* note 3.

18. *See id.* *Compare* HB 71, as introduced, 1997 Ga. Gen. Assem., *with* HB 71 (HCS), 1997 Ga. Gen. Assem.

19. *See* Murphy Interview, *supra* note 3. *Compare* HB 71, as introduced, 1997 Ga. Gen. Assem., *with* HB 71 (HCS), 1997 Ga. Gen. Assem.

amended it.²⁰ While the House retained each of the substantive changes made in Committee,²¹ it implemented several additional changes. First, the House floor amendment included a provision for a five dollar charge to residential telephone subscribers who desire inclusion in the data base, as well as a ten dollar charge to individuals or entities who access the data base.²² Second, the floor amendment added a provision mandating that solicitors could not utilize a method to block a subscriber's use of caller identification services.²³ Third, the amended bill relieved providers of caller identification services from liability for violations under this bill.²⁴ Finally, this version added that charitable solicitations, pursuant to Code section 43-17-5, and solicitations by political candidates would both be exempt from the prohibition on telephone solicitations.²⁵ With these changes, the House passed the bill.²⁶

From House Floor Amendment to Senate Consumer Affairs Committee

The Senate referred the bill to the Consumer Affairs Committee, where it passed by substitute.²⁷ First, the substitute provided for and outlined legislative findings and intent.²⁸ For the first time, the bill specifically provided that its purpose was to "strike a balance between commercial free speech and citizens' rights to privacy" by providing citizens with the means to avoid unwanted commercial solicitations while also allowing willing citizens to continue receipt of such calls.²⁹ Second, the Committee changed the definition of "established

20. See HB 71 (HFSFA), 1997 Ga. Gen. Assem.

21. Compare HB 71 (HCS), 1997 Ga. Gen. Assem., with HB 71 (HFSFA), 1997 Ga. Gen. Assem.

22. Compare HB 71 (HCS), 1997 Ga. Gen. Assem., with HB 71 (HFSFA), 1997 Ga. Gen. Assem.

23. Compare HB 71 (HCS), 1997 Ga. Gen. Assem., with HB 71 (HFSFA), 1997 Ga. Gen. Assem.

24. Compare HB 71 (HCS), 1997 Ga. Gen. Assem., with HB 71 (HFSFA), 1997 Ga. Gen. Assem.

25. Compare HB 71 (HCS), 1997 Ga. Gen. Assem., with HB 71 (HFSFA), 1997 Ga. Gen. Assem.

26. See State of Georgia Final Composite Status Sheet, Mar. 28, 1997.

27. See HB 71 (SCS), 1997 Ga. Gen. Assem.

28. Compare HB 71 (HFSFA), 1997 Ga. Gen. Assem., with HB 71 (SCS), 1997 Ga. Gen. Assem.

29. HB 71 (SCS), 1997 Ga. Gen. Assem. Compare HB 71 (HFSFA), 1997 Ga. Gen. Assem., with HB 71 (SCS), 1997 Ga. Gen. Assem.

business relationship” to a “prior or existing relationship, not previously terminated by either party, formed by a voluntary two-way communication.”³⁰ Third, the Committee also added a requirement that solicitors disclose: (1) the identity of the seller; (2) the purpose of the call; (3) the nature of the goods or services; and (4) the fact that no purchase or payment was necessary to be able to win a prize or to participate in a prize promotion.³¹ Likewise, the substitute required oral disclosure of: (1) the total costs and quantities of offered goods or services; (2) all material restrictions, limitations, or conditions prior to customer payment; (3) any policies of not making refunds, cancellations, exchanges, or repurchases; and (4) any material aspect of an investment opportunity.³² This version also provided that the sales transaction would be deemed final only upon the consumer's receipt of written notice of the mandated oral disclosures.³³

The Committee's substituted version proceeded to the Senate floor where legislators made one minor amendment before passing the bill and returning it to the House.³⁴ HB 71 ultimately failed in the 1997 legislative session when the House refused to concur in the Senate amendments to the bill.³⁵ The 1997 legislative session ended, and HB 71 was tabled until the 1998 legislative session.³⁶

30. HB 71 (SCS), 1997 Ga. Gen. Assem. *Compare* HB 71 (HFSFA), 1997 Ga. Gen. Assem., *with* HB 71 (SCS), 1997 Ga. Gen. Assem.

31. *Compare* HB 71 (HFSFA), 1997 Ga. Gen. Assem., *with* HB 71 (SCS), 1997 Ga. Gen. Assem.

32. *Compare* HB 71 (HFSFA), 1997 Ga. Gen. Assem., *with* HB 71 (SCS), 1997 Ga. Gen. Assem.

33. *Compare* HB 71 (HFSFA), 1997 Ga. Gen. Assem., *with* HB 71 (SCS), 1997 Ga. Gen. Assem.

34. *See* State of Georgia Final Composite Status Sheet, Mar. 28, 1997. *Compare* HB 71 (SCS), 1997 Ga. Gen. Assem., *with* HB 71 (SCSFA), 1997 Ga. Gen. Assem.

35. *See* Telephone Interview with Sen. Steve Henson, Chairman of Senate Consumer Affairs Committee, Senate District No. 55 (Aug. 4, 1998) [hereinafter Henson Interview]. Senator Henson commented that the bill failed in the 1997 legislative session primarily because time ran out in the session and Speaker Murphy did not approve of the Senate changes. *See id.* Representative Jeff Brown agreed that the bill failed in the 1997 legislative session due to opposition by Speaker Murphy, but added that there were concerns that the bill would create more government bureaucracy. *See* Telephone Interview with Rep. Jeff Brown, House District No. 130 (Aug. 21, 1998). In particular, Rep. Brown indicated that there were private services already in place to handle telemarketing concerns, and that many people already have answering machines and caller identification services, which allow them to personally screen telephone calls. *See id.*

36. *See* State of Georgia Final Composite Status Sheet, Mar. 28, 1997.

From the Senate to Conference Committee

During the 1998 legislative session, the bill proceeded to Conference Committee where, once again, lawmakers revised it.³⁷ According to Senator Henson, it was an educational process in a brief time period.³⁸ Basically, House and Senate members were educated on the issue in 1998 and came to a mutual understanding of what needed to be done.³⁹ Legislators ultimately deleted the disclosure requirements, except for the disclosure of the identity of the caller, because both houses believed it was the easiest way to get the bill passed⁴⁰ and because the bill was becoming too complex.⁴¹ The House and Senate adopted the final report on March 12, 1998, and Governor Zell Miller signed the bill into law on April 2, 1998.⁴²

The Act

The Act amends chapter 5 of title 46 by adding a new Code section. This Code section first outlines seven specific legislative findings.⁴³ To a certain degree, these findings incorporate "legislative intents" from prior versions.⁴⁴ For example, the findings indicate that individual privacy rights and commercial freedom of speech can be balanced, and that it is in the public interest to establish a mechanism under which individuals can choose whether to receive solicitations.⁴⁵ However, other findings are more specific. Although prior versions of the Act indicated that Georgia citizens receive numerous unsolicited phone calls, the Act specifically finds that more than 300,000 solicitors place calls to more than eighteen million Americans, and more than 30,000 businesses actively telemarket goods and services.⁴⁶ The Act lists other findings relating to the pervasiveness of solicitations due to cost effective telemarketing techniques and public interest in

37. Compare HB 71 (SCSFA), 1997 Ga. Gen. Assem., with HB 71 (CCS), 1998 Ga. Gen. Assem.

38. See Henson Interview, *supra* note 35.

39. See *id.*

40. See Murphy Interview, *supra* note 3.

41. See Henson Interview, *supra* note 35.

42. See State of Georgia Final Composite Status Sheet, Mar. 19, 1998.

43. See O.C.G.A. § 46-5-27(a) (Supp. 1998).

44. Compare *id.* with HB 71 (SCS), 1997 Ga. Gen. Assem.

45. Compare O.C.G.A. § 46-5-27(a) (Supp. 1998), with HB 71 (SCS), 1997 Ga. Gen. Assem.

46. Compare O.C.G.A. § 46-5-27(a) (Supp. 1998), with HB 71 (SCS), 1997 Ga. Gen. Assem.

establishing a mechanism to address public outrage over home intrusion by solicitors.⁴⁷

The Act also clarifies the meaning of certain terms.⁴⁸ First, the Act defines the term “caller identification service” as a telephone service that allows subscribers to see the telephone number of the caller.⁴⁹ Second, the Act indicates that a “residential subscriber” is either the actual individual who has subscribed to the service or other persons living or residing with that individual.⁵⁰ Lastly, the Act replaces the phrase “unsolicited calls” with the more affirmative phrase “telephone solicitations.”⁵¹ In particular, the Act defines the term “telephone solicitation” as “any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.”⁵² However, the following three types of communications are specifically excepted: (1) communications to a residential subscriber with that subscriber’s prior express agreement; (2) communications with a subscriber where a prior or current business or personal relationship exists; and (3) communications by or on behalf of a charitable organization.⁵³

Originally, the bill allowed a residential subscriber to more easily avoid telephone solicitations.⁵⁴ As introduced, a residential subscriber could avoid telephone solicitations from any or all of the following classes of calls: (1) advertising or offering for sale, lease, rental, or gifts; (2) soliciting donations of money, goods, services, or property; (3) conducting polls or surveys; or (4) soliciting votes for candidates for public office or on ballot questions.⁵⁵

Although the Act also embodies changes from earlier bill versions, it does not include the same oral and written disclosure requirements that were added in the Senate version of the bill.⁵⁶ Likewise, the Act

47. See O.C.G.A. § 46-5-27(a) (Supp. 1998).

48. See *id.* § 46-5-27(b).

49. *Id.* § 46-5-27(b)(1).

50. *Id.* § 46-5-27(b)(2).

51. *Id.* § 46-5-27(b)(3).

52. *Id.*

53. See *id.*

54. Compare HB 71, as introduced, 1997 Ga. Gen. Assem., with O.C.G.A. § 46-5-27 (Supp. 1998).

55. Compare HB 71, as introduced, 1997 Ga. Gen. Assem., with O.C.G.A. § 46-5-27 (Supp. 1998).

56. Compare HB 71 (SCS), 1997 Ga. Gen. Assem., with O.C.G.A. § 46-5-27 (Supp. 1998).

eliminates the purpose statement and the definition of "established business relationship."⁵⁷

Finally, the Act adds a scienter requirement, indicating that no telephone solicitor shall "knowingly" utilize any method to block caller identification services.⁵⁸ Lawmakers added this provision because they believed it was possible for a solicitor to call without knowing that the caller identification block was in operation.⁵⁹

Opposition to HB 71

Prior to enactment, the primary source of opposition to HB 71 came from political pollsters who were concerned that the bill would prevent them from conducting political polling.⁶⁰ In particular, political pollsters and market researchers were concerned that if people could elect out of inclusion in a marketing sample, then it would negatively affect research results.⁶¹ Accordingly, various political pollsters and market research groups lobbied Georgia representatives, who were responsive to their concerns.⁶² In the end, the Act passed unanimously in both the House and the Senate.⁶³

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57. Compare HB 71 (SCS), 1997 Ga. Gen. Assem., with O.C.G.A. § 46-5-27 (Supp. 1998).

58. Compare HB 71, as introduced, 1997 Ga. Gen. Assem., with O.C.G.A. § 46-5-27 (Supp. 1998).

59. See Murphy Interview, *supra* note 3.

60. See *id.*

61. See Telephone Interview with Beth Schapiro, Beth Schapiro & Associates (Aug. 3, 1998) [hereinafter Schapiro Interview]; Henson Interview, *supra* note 35. Senator Henson commented that both Georgia State University and Kennesaw State College were opposed to the bill, as introduced, because it would have skewed market research. See Henson Interview, *supra* note 35.

62. See Schapiro Interview, *supra* note 61.

63. See Georgia House of Representatives Voting Record, HB 71 (Mar. 12, 1998); Georgia Senate Voting Record, HB 71 (Mar. 12, 1998).